IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No. 238 of 2007

Date of decision 24.4.2007

Chuni Lal and another **…Applicants.**

Versus

State of H.P. **… Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting? No

For the applicants : Mr. K.B. Khajuria, Advocate.

For the respondent : Mr. Ashok Chaudhary, Addl. A.G.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Applicants have been booked and sent up for trial for offences, under Sections 452, 376 and 506 read with Section 34 of the Indian Penal Code, for allegedly having entered the house of the prosecutrix on the night intervening 22nd / 23rd of December, 2006 and committing rape on her. The matter was reported to the police by the mother of the prosecutrix by means of an application addressed to the Superintendent of Police, Chamba, who forwarded it to Police Station Tisa, within the area of jurisdiction of which the alleged offence was committed. Chuni Lal, one of the applicants, had earlier been booked and challaned for

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Whether reporters of the local papers may be allowed to see the judgment?

allegedly having kidnapped the prosecutrix. The trial regarding the alleged incident of kidnapping was pending in the Magistrate's Court, when the two applicants allegedly entered the room where the prosecutrix was asleep and committed rape on her.

3. According to the contents of the complaint the complainant (mother of the prosecutrix) was asleep in one room while the prosecutrix in the other. The complainant heard the cries and shrieks of the prosecutrix and when she went to the room, she noticed that the room was bolted from inside. She did thumping on the door, but it was not opened. After some-time the two applicants allegedly opened the door and came out and then they pushed the complainant and ran away.

4. During the course of investigation statement of the sister of the prosecutrix Kumari Sonu has been recorded. Her age is 13 years. She has stated that she and her grand mother were sleeping in the same room as the prosecutrix, on the fateful night and that after the alleged incident her sister (the prosecutrix) woke her up and asked her to switch on the light and when she switched on the light, her sister told that the applicants had entered the room forcibly and raped her.

5. The investigating agency also recorded statement of the grand-mother of the prosecutrix. The statement of the grand-mother is to the effect that she is hard of hearing, though she does state that she was sleeping in the same room as the prosecutrix and her sister, on the fateful night.

6. Learned counsel for the applicants submits that the entire story is false and cooked up. According to him, when the sister and the grand-mother of the prosecutrix were sleeping in the same room, how could

she have been raped by the applicants or how could they have not woken up on hearing the cries and shrieks of the prosecutrix, when her mother, sleeping in the adjoining room, was woken up by her cries and shrieks.

7. The submission cannot be gone into on merits at this stage. Suffice is to say that the sister of the prosecutrix is very young. May be that she was in deep sleep when the incident took place and because of that she did not hear the cries. The grand-mother of the prosecutrix is hard of hearing, per her own statement and it is likely that because of her being in sleep and also being hard of hearing, she could not hear the cries and shrieks of the prosecutrix.

8. Statement of the prosecutrix has also been recorded during the course of the investigation. She has corroborated the contents of the complaint

9. Looking to the facts and circumstances of the case as also the fact that one of the applicants is already facing trial for kidnapping the prosecutrix and during the period when he was on bail, he committed rape on the prosecutrix in the company of his accomplice, I do not think this is a fit case for grant of bail. Application is dismissed.

April 24, 2007 (BC) **(Surjit Singh), J.**